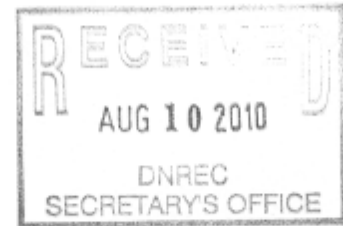




Widener University

School of Law
*Environmental & Natural
Resources Law Clinic*

August 9, 2010



Chair
State Coastal Zone Industrial Control Board
c/o Dept. of Natural Resources & Environmental Control
89 Kings Highway
Dover, DE 19901

Re: Sierra Club Appeal

Dear Board Chair:

Enclosed herewith is an original and two copies of the appeal form for Sierra Club to challenge Secretary's Order 2010-CZ-0022 and Coastal Zone Permit No. 386 issued July 23, 2010 to Tidewater Environmental. Also enclosed is a check in the amount of \$100 for the appeal fee.

Sincerely,

Kenneth T. Kristl

Director, Environmental & Natural Resources Law Clinic

Enclosures

8-16-2010
Date Received (to be filled
In by the Secretary)

CZA 2010-61
Appeal Application Number (to
be filled in by the Secretary)

**STATE COASTAL ZONE INDUSTRIAL CONTROL BOARD
APPLICATION TO APPEAL FROM
A COASTAL ZONE ACT DECISION**

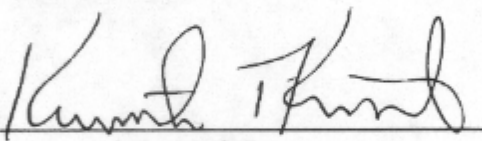
Date August 9, 2010

A. **Name of Appellant:** Sierra Club
Address and Telephone Number: 100 West 10th Street, Ste. 106, Wilmington, DE 19801
302-351-2776

B. **Identify the Coastal Zone Decision Being Appealed**

Secretary's Order 2010-CZ-0022 and Coastal Zone Permit No. 386 issued July 23, 2010 to
Tidewater Environmental Services, Inc. and publicly noticed on July 28, 2010

C. **Date of Public Notice of the Coastal Zone Decision** _____
(to be filled in by the Secretary)

D. **Signature of Appellant or Appellant's Representative** 
Kenneth T. Kristl, Esq.

Position or Title (if any) _____ Counsel for Appellants

E. **Briefly State the Reasons for Your Appeal. For example, if you believe the Decision is contrary to the Coastal Zone Act, identify those parts of the law involved and state why the Decision is contrary to them. Your Statement of Reasons for Appeal should be attached to this Application Form.**

See attached

Please include the appeal fee of One Hundred Dollars (\$100) with this Appeal Application. The check or money order should be made out to: **Department of Natural Resources and Environmental Control**

Submit the completed Appeal Application, including the appeal fee, within fourteen (14) days following the public notice of the Coastal Zone Act decision to:

Chair
State Coastal Zone Industrial Control Board
c/o Department of Natural Resources and Environmental Control
89 Kings Highway
Dover, DE 19901

Reasons for Appeal to the Coastal Zone Industrial Control Board concerning Secretary's Order 2010-CZ-0022 and Department of Natural Resources and Environmental Control's Delaware Coastal Zone Act Permit No. 386 for the Wandendale Regional Wastewater Treatment and Disposal Facility.

Pursuant to 7 Del. C. §7007, the Sierra Club ("Appellant") submit these Reasons for Appeal as part of their Application to Appeal From a Coastal Zone Act Decision form. The Appellant challenges the Secretary of Delaware Department of Natural Resources Order 2010-CZ-0022 ("Order") and Coastal Zone Permit No. 386 ("the Permit"), which grants Tidewater Environmental Services, Inc. the right under the Coastal Zone Act to build the Wandendale Regional Wastewater Treatment and Disposal Facility ("Wandendale Facility"). Kenneth T. Kristl, Esq. and the Widener University School of Law's Environmental and Natural Resources Law Clinic represent the Appellant in this matter.

Appellant asks the Coastal Zone Industrial Control Board (CZICB) to reverse the issuance of Coastal Zone Act Permit No. 386 for the following reasons:

1. In issuing the Order and Permit, the Secretary violated 7 Del. C. § 7004(b) and the regulations under the Coastal Zone Act (including section H.3 thereof) by his failure to consider or his improper and incomplete consideration of the direct and cumulative environmental impacts of the Wandendale Facility, including but not limited to:
 - a. Air and water pollution likely to be generated in the Coastal Zone as a result of the operation and existence of the Wandendale Facility;
 - b. Destruction of wetlands;
 - c. Effect of Wandendale Facility operations on the quality and quantity of surface, ground, and subsurface water resources, including the Inland Bays;
 - d. Increased density, noise, and other direct and cumulative environmental impacts generated in the Coastal Zone as a result of the operation and existence of the Wandendale Facility;
 - e. Compliance with applicable laws; and
 - f. Adequate mitigation of the adverse environmental impacts of the project.
2. In issuing the Order and Permit, the Secretary violated 7 Del. C. § 7005 and the regulations under the Coastal Zone Act (including sections I.1 and I.3 thereof) by his improper and incomplete consideration and ultimate approval of required offset proposals, including but not limited to:
 - a. Failure to require proof that the offset will be clearly and demonstrably more beneficial to the environment in the Coastal Zone than the harm done by the negative environmental impacts associated with the Wandendale Facility;
 - b. Issuing the Permit before all applications for permits required for the offset proposals from programs within DNREC have been received and deemed administratively complete by DNREC; and
 - c. Failing to include within the Permit an enforceable condition requiring completion of the offset proposals pursuant to a schedule for completion of the offset proposals.

3. In issuing the Order and Permit, the Secretary violated 7 Del. C. § 7005 and the regulations under the Coastal Zone Act (including sections H and J thereof) by using improper procedures in reviewing and approving the permit application, including but not limited to:
 - a. Allowing revisions to the application, including changes to the Wandendale Facility design and structure and to the material terms of the application, after public notice announcing the public hearing had been made;
 - b. Allowing changes to the Wandendale Facility design and structure and to the material terms of the application without documentation, modification of the application, or public notice;
 - c. Reaching interim agreements with the applicant on changes to the Wandendale Facility design and structure and to the material terms of the application without documentation, modification of the application, or public notice;
 - d. Allowed the presentation of materially inaccurate descriptions of the Wandendale Facility and the application during the public hearing;
 - e. Denied the public the opportunity for a fair and full public hearing by failing to include documents and other material information in the public record prior to the May 19, 2010 hearing and/or the close of the public comment period;
 - f. Conducted a public hearing that failed to satisfy applicable principles of due process, including the failure to provide documents in the public record and/or to correct materially inaccurate descriptions of the Wandendale Facility and the application.
4. The Secretary violated 7 Del. C. § 7005, the regulations under the Coastal Zone Act, and principles of due process by issuing Permit No. 386 with conditions that are so vague that the Appellants, the Board, and persons of reasonable intelligence cannot determine or review the impact of those provisions.
5. The Secretary otherwise acted arbitrarily, capriciously, and in violation of law in issuing the Permit.